IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2659 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KULSUMBEN NOORBHAI POLARA - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MS JIRGA D JHAVERI for Petitioner(s) : 1,
MR AY KOGJE AGP for Respondent(s) : 1,
MR HS MUNSHAW for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 22/11/2006

ORAL JUDGMENT

1. Ms.Jirga Jhaveri, learned counsel for the petitioner, Mr.A.Y. Kogje, learned Assistant Government Pleader for

the State and Mr. H.S. Munshaw, learned counsel for the respondent No.2.

2. The petitioner, a primary teacher serving in Primary school run by the District Panchayat, applied for allotment of land in Kanodar Gram Panchayat in accordance with the Government Resolutions dtd.1/5/1963 and 11/5/1979. Certain preliminary inquiries were made, statements of the petitioner were recorded and after taking into consideration the totality of the circumstances and submissions, the District Development Officer made an order in favour of the petitioner allotting 67.74 sq.mtrs. (750 sq.mtrs.) of land. The premium was fixed, the same was deposited by the petitioner and the petitioner could secure the possession of the property. It appears that thereafter the matter was reported to the Special Secretary (Appeals/Disputes), Revenue Department that the petitioner could secure the plot by suppressing the material facts and as the husband of the petitioner was possessed of a house and a plot, the petitioner was not entitled to any allotment in her favour. The Special Secretary issued a notice to the petitioner to show cause, the petitioner filed a detailed reply to it and submitted inter-alia that at the time when she made the

application, she was living separately and under the circumstances, she was justified in making the application and the order of allotment could not be interfered with. Without making any inquiry, the Special Secretary, however, vide his order dtd.6/1/1994 set aside the order passed by the District Development Officer and cancelled the allotment. Being aggrieved by the order passed by the Special Secretary, the petitioner is before this Court.

3. The submissions of the learned counsel for the petitioner is that on the date when she made the application and even on the date when the allotment was made in her favour, she was living separately and under the circumstances, without any inquiry, an order against her interest could not be made.

4. Mr.Munshaw, learned counsel for the respondent No.2 submitted that subsequent to the order of allotment, the respondent No.2 could collect various materials and therefore, they required the Special Secretary to quash / set aside the order of allotment. It is submitted that in the inquiry made by the respondent No.2, it was revealed that the husband of the petitioner was possessed of a house and a plot since 1985-86 and under the circumstances, the petitioner was not entitled to any

allotment.

5. Mr.Kogje, learned counsel for the respondent State submits that once it is found that the petitioner was not entitled to allotment of the plot, then, under the circumstances, the Secretary would be justified in setting aside the order of allotment.

6. On being asked that whether the Secretary had informed the present petitioner about the material which was proposed to be used against the petitioner and whether any inquiry into the allegations made by the department or the defence raised by the present petitioner was made, Mr.Kogje, learned AGP fairly submitted that no such inquiry was made and the show cause notice does not contain the details of the evidence possessed by the department or the respondent No.2.

7. Taking into consideration the totality of the circumstances, I am of the opinion that the order passed by the learned Secretary cannot be allowed to stand, firstly because, he did not inform the petitioner about the evidence which was to be used against her and secondly, he did not make any inquiry into the allegations made by the department and the defence raised by the petitioner. It is trite law that if revisional authority wants to exercise

its suo-motu powers on availability of the new matter or material, then it has to give notice of those facts and evidence to the respondent – non-applicant and in case a defence relating to fact is made, an inquiry has to be made or in the alternative, in a given set of circumstance, the revisional authority may set aside the order passed by the first authority/tribunal/court and remand the matter to such authority for making further inquiry in the matter.

8. Undisputedly, the evidence used against the petitioner was not brought to her notice and even an inquiry was not made. Under the circumstances, the impugned order passed by the Secretary is set aside.

9. At this stage, learned counsel for the petitioner submits that on the date when she made the application for allotment of the land, she was living separately, but as on today, the petitioner is living with her husband. It was also submitted that the petitioner is ready and willing to pay the market price prevalent as on today, therefore, allotment may be maintained.

10. In view of the offer made by the learned counsel for the petitioner, the order passed by the allotting authority is also quashed. The allotting authority is hereby directed to

make an inquiry that whether on the date of the application and date of the allotment, the petitioner was living with her husband or was living separately and whether on the date of the application / order of allotment, the petitioner's husband was possessed of some property including a house and a plot. If the inquiry results in favour of the petitioner, then an order of allotment can be reinstated, but, in case, the inquiry goes against the petitioner then, the respondent No.2 shall take up the issue of allotment in accordance with law on payment of the price prevalent on the date of the order. In case the authority finds that the land can be allotted in favour of the petitioner on the market price, then he may pass such order in accordance with law.

11. The petition is accordingly disposed of with the observations and directions aforesaid.

(R.S. GARG,J.)

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